

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA)
Complainant,)
)
v.) 8 U.S.C. §1324a Proceeding
) Case No. 94A00122
GALILEE FASHIONS INC.,)
Respondent.)
_____)

ORDER

(October 11, 1994)

The procedural history of this case is set forth in the Final Decision and Order Granting Complainant's Motion for Default dated September 9, 1994, as corrected by an Errata of that date. The Final Decision and Order was issued subsequent to filing on August 11, 1994 of Complainant's Motion for Default Judgment for failure of Respondent to answer the complaint. On August 12, 1994 I issued an Order to Show Cause Why Default Judgment Should Not Issue. No answer to the complaint and no reply to the show cause having been filed, the Final Decision and Order granted the default judgment on September 9, 1994. On September 21, 1994, by facsimile transmission, Complainant forwarded an unsigned and undated draft of a Joint Motion to Amend Final Decision to Approve Consent Findings.

On October 6, 1994 such a document containing a settlement between the parties in the form of consent findings was filed, dated September 22, 1994, and signed by the parties.

The Rules of Practice and Procedure for cases before Administrative Law Judges, 28 C.F.R. pt. 68 (1993), as amended by 59 Fed. Reg. 41,243 (1994), was amended subsequent to its first iteration in order to clarify the powers of administrative law judges after entry of a Final Decision and Order. Specifically, 28 C.F.R. §68.52 provides that clerical

mistakes or typographical errors may be corrected within 30 days after issuance of the decision and order.

The relief sought in the joint motion is not a request to correct a mistake or error. It is rather a request to substitute the agreement of the parties in lieu of action of the Judge. Presumptively, therefore, the negative implication of 28 C.F.R. §68.52 (c)(4) is that following issuance of a final decision, the Judge may modify it only to correct clerical mistakes or to correct typographical errors. Accordingly, the present motion cannot be granted.

Another reason compels that the motion be denied. The assignment of responsibilities in implementation of the prohibitions against unauthorized employment and the requirements of employment eligibility verifications stipulated by 8 U.S.C. §1324a, do not limit discretion of the Immigration and Naturalization Service (INS), following issuance of a final decision and order by the administrative law judge. I am unaware of any rule of law or logic which precludes INS from obtaining an agreed disposition with Respondent to the same effect as it proposes in the consent findings tendered to me. Where the final decision and order of an administrative law judge adjudicates a specific civil money penalty, INS retains the authority to obtain a lesser amount in preference to a lawsuit for the purpose of obtaining the full sum adjudged. The Joint Motion to Amend Final Decision to Approve Consent Findings is denied.

SO ORDERED.

Dated and entered this 11th day of October, 1994.

MARVIN H. MORSE
Administrative Law Judge